Raja Servai a/l SHS Iyadorai v Tunku Abdul Aziz Ibrahim & Ors

HIGH COURT (KUALA LUMPUR) — SUIT NO R1–22–01 OF 2005
RAUS SHARIF J
3 MARCH 2005

Unincorporated Associations — Members' Club — Suspension of members — Injunction against suspension — Question of rules of natural justice — Whether court may interfere — Whether plaintiff had to exhaust his domestic remedies before resorting to courts

The plaintiff was a member of the Royal Selangor Club ('the Club'). The club was a social and sporting club. The first to eighth defendants were the members of the General Committee of the Club ('the GC'). The GC was the body entrusted by the Constitutional Rules of the Club ('the Rules') with the day to day management of the Club. The ninth defendant was the Chairman of the Election and Disciplinary Committee ('the EDC') of the Club. The EDC was charged under the Rules with the handling of two matters: first, the admission or election of members. The second function of EDC was the disciplinary function. The Rules conferred on the EDC the exclusive function of handling matters relating to discipline concerning members of the Club.

On 4 December 2004, the plaintiff was at the Cellar in the Club. The plaintiff whilst at the Cellar was allegedly to be in a loud and repeated manner abused at the ninth defendant. The plaintiff later extended a letter of apology to the ninth defendant. The ninth defendant rejected the plaintiff's apology as he did not perceive the apology as genuine. After rejecting the apology, the ninth defendant proceeded to lodge a complaint against the plaintiff with the EDC.

The EDC, vide a letter sought from the plaintiff his version of the events that transpired on 4 December 2004. In the same letter, the plaintiff was informed of the EDC's decision to suspend the plaintiff with immediate effect pending the plaintiff's response or inquiry or further investigation.

The plaintiff commenced a writ action against the defendants. The plaintiff simultaneously applied for an ex-parte injunction. The central issue in this case was whether the EDC could suspend a member prior to an inquiry. The plaintiff's contention was that the EDC had no power to suspend him and by doing so, the EDC was in breach of the rules of natural justice.

Held, dismissing the plaintiff's summons with costs:

(1) The suspension of the plaintiff was not a punishment. It was only a suspension pending an inquiry. The merit or otherwise of the complaint had not been decided as yet. As such the rule of natural justice had no application at this stage (see para 24); *Lewis v Heffer* [1978] 1 WLR 1061 followed.

(2) The Club was a social club. The Rules of the Club provided that when a complaint is lodged against a member, the complaint must be investigated. The member will be given the right to be heard. Once the EDS has heard all parties and witnesses, it will make a decision. That decision may be appealable either to GC or even to an EGM of the Club. Thus, for the moment, the plaintiff has to put his case to the EDC just as any member of the Club has to when a complaint is pending investigation. Subsequently, if he is not happy with the decision of the EDC, he has to resort to the domestic remedies available under the Rules. The plaintiff has to exhaust his domestic remedies before resorting to the courts (see para 25).

[**Bahasa Malaysia summary**

Plaintif merupakan seorang ahli Kelab Diraja Selangor ('Kelab itu'). Kelab itu merupakan satu kelab sosial dan sukan. Defendan pertama hingga defendan kelapan merupakan ahli-ahli Jawatankuasa ('GC') Kelab itu. GC merupakan badan yang diberi kuasa oleh Rukun Perlembagaan ('Rukun itu') Kelab untuk menguruskan hal-hal seharian Kelab itu. Defendan kesembilan adalah Pengerusi Jawatankuasa Pelantikan dan Disiplin ('EDC') Kelab itu. EDC diberi kuasa dibawah Rukun itu untuk mengendalikan dua perkara: pertama, penerimaan atau pelantikan ahli-ahli. Fungsi kedua EDC adalah fungsi disiplin. Rukun itu memberi kepada EDC fungsi eksklusif untuk menguruskan perkara-perkara berkenaan dengan disiplin ahli-ahli Kelab itu.

Pada 4 Disember 2004, plaintif berada di Cellar Kelab itu. Plaintif semasa diCellar dikatakan telah dengan suara yang kuat dan berulang-ulang kali menghina defendan kesembilan. Plaintif kemudiannya telah menulis sepucuk surat meminta maaf daripada defendan kesembilan. Defendan kesembilan menolak permintaan maaf itu kerana tidak puas bahawa permintaan itu jujur. Setelah menolak permintaan maaf itu, defendan ke sembilan seterusnya membuat satu aduan kepada EDC terhadap plaintif.

EDC, menurut sepucuk surat meminta daripada plaintif versi beliau mengenai kejadian yang berlaku pada 4 Disember 2004. Dalam surat yang sama, plaintif diberitahu akan keputusan EDC untuk menggantungkan keahlian plaintif dengan serta merta sementara menunggu respons plaintif atau penyelidikan atau siasatan mendalam.

Plaintif telah memulakan satu tindakan writ terhadap defendan-defendan. Pada masa yang sama, plaintif memohon untuk satu injunksi ex-parte. Isu utama dalam kes ini adalah sama ada EDC boleh menggantung keahlian seorang ahli sebelum siasatan dijalankan. Adalah tuntutan plaintif bahawa EDC tidak mempunyai kuasa untuk menggantung keahliannya dan dengan membuat demikian, EDC telah mungkir rukun-rukun keadilan asasi.

Diputuskan, menolak saman plaintif dengan kos:

(1) Penggantungan plaintif bukan satu hukuman. Ia hanya merupakan satu penggantungan sementara menunggu siasatan. Merit atau sebaliknya aduan itu belum diputuskan. Oleh itu, rukun keadilan asasi tiada aplikasi pada tahap ini (lihat perenggan 24); *Lewis v Heffer* [1978] 1 WLR 1061 diikut.

(2) Kelab itu merupakan satu kelab sosial. Rukun Kelab itu menyatakan bahawa apabila satu aduan dilakukan terhadap seorang ahli, aduan itu mesti disiasat. Ahli itu akan diberi hak untuk didengar. Sebaik sahaja EDC menimbangkan semua pihak dan saksi, ia akan membuat satu keputusan. Keputusan ini boleh dirayu kepada GC atau EGM Kelab itu. Maka, sementara itu, plaintif terpaksa menghadapkan kes beliau kepada EDC seperti mana-mana ahli Kelab itu sementara aduan menunggu siasatan. Seterusnya, sekiranya beliau tidak puas dengan keputusan EDC, beliau boleh menggunakan remedi-remedi domestik sebelum merujuk kes kepada mahkamah (lihat perenggan 25).]

Notes

For cases on members' club generally, see 12 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 2372–2381.

Cases referred to

Florence Bailes v Dr Ng Jit Leong [1982] 1 MLJ 333 (refd)
John v Rees [1970] Ch 345 (refd)
Lewis v Heffer [1978] 1 WLR 1061 (folld)
Tharmalingam v Sambanthan [1961] MLJ 63 (refd)

Harpal Singh (Habinder Kaur with him) (Mathews Hun Kandiah) for the plaintiff.
C Abraham (Rishwant Singh) (Shearn Delamore & Co) for the defendants.

Raus Sharif J:

[1] The plaintiff is a member of the Royal Selangor Club ('the Club'). The club is a social and sporting club.

[2] The first to the eighth defendants are the members of the general committee of the club ('the GC'). The GC is the body entrusted by the Constitutional Rules of the Club ('the Rules') with the day to day management of the club.

[3] The ninth defendant is the Chairman of the Election & Disciplinary Committee ('EDC') of the club. The EDC is charged under the Rules with the handling of two matters: first, the admission or election of members. This function is carried out by the EDC in conjunction with GC. The second function of EDC is the disciplinary function. The Rules confer on the EDC

the exclusive function of handling matters relating to discipline concerning members of the club. The EDC is made up of five members.

[4] On 4 December 2004 around 4pm, the plaintiff was at the Cellar in the club. The cellar is a pub. The plaintiff whilst at the Cellar, allegedly to be in a loud and repeated manner abused at the ninth defendant.

[5] The first defendant was present and personally witnessed the incident. On 5 December 2004 he wrote a letter to the plaintiff expressing the following:

> … my deep disappointment and grave concern on your verbal outburst around 4pm in the Cellar of RSC. Your somewhat defamatory verbal statement, certainly unbecoming of any respectable club member was targeted at Yang Bhg Dato Charan Dass, Chairman of the Election & Discipline Committee. You loudly and repeatedly announced that he lacked the moral fibre to hold the post and that he derelicted his responsibilities by being away in London when an E&D enquiry was being held. You also claimed that he had an invalid claim to the post of Chairman as he was returned unopposed and not elected at the AGM earlier this year.
>
> The other members present in the Cellar including Mr PM Muthu, Mr Jimmy Chow, Dr A Selvanathan and Yang Bhg Dato Charan Dass would also testify that your loud, unprovoked statement were not only a nuisance but were also derogatory and probably intended to disturb the peace in the club. Although your confrontational attitude caused them to move away from you, your denunciation of Yang Bhg Dato Charan Dass unfortunately continued.
>
> I am aware that our club rules provide for appropriate remedies in respect of sad unacceptable behavior. However, guided by the principle of securing a speedy, construction and satisfactorily solution, a public apology from you to Yang Bhg Dato' Charan Dass is in my view as a fellow member, certainly warranted.
>
> As I am copying this letter to Yang Bhg Dato' Charan Dass, I therefore suggest that you send him, within a week, a written apology in order to close the matter.
>
> This should also satisfy the wider, interest of all members also utilise the club's food and entertainment outlets for comradeship and enjoyment.

[6] The plaintiff by a letter dated 8 December 2004 forwarded an explanation and his views of the incident complained of and extended a letter of apology to the ninth defendant where the plaintiff expressed as follows:

> I refer to the letter of 5 December 2004 from the President of the Royal Selangor Club to me which was copied to you.
>
> I enclosed herewith a copy of my reply to the President dated 8 December 2004.
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> I want to assure you that I have always held you with the highest regards and continue to do so.
>
> On that particular evening I was expressing to Mr Jimmy Chow my grave dissatisfaction at the decision of EDC in the Daljit Singh's case and at the fact that

they took it upon themselves to conduct the inquiry while you were away overseas. I cannot blame you for what your colleagues in the EDC did not and do not. But the President says that I was understood to say disparaging remarks about you in my conversation with Mr Jimmy Chow.

I hereby apologise to you without any reservation or qualification.

[7] By a letter dated 9 December 2004 to the plaintiff, the ninth defendant rejected the plaintiff's apology as he did not perceive the apology as genuine. After rejecting the apology, the ninth defendant proceeded to lodge a complaint against the plaintiff with the EDC.

[8] The EDC, vide a letter dated 14 December 2004 issued by the General Manager/Secretary of the club, sought from the plaintiff his version of the events that transpired on 4 December 2004. In the same letter, the plaintiff was informed of the EDC's decision to suspend the plaintiff with immediate effect pending the plaintiff's response or inquiry or further investigation.

[9] On 16 December 2004, the plaintiff commenced a writ action against the defendants. The plaintiff simultaneously applied for ex-parte injunction in encl 3. In encl 3, the plaintiff sought for the following orders:

(1) An order that on the plaintiff's undertaking to abide by any order the court or a judge may make as to damages in case the court or a judge should hereafter be of the opinion that the defendants shall have sustained by by reason of this order which the plaintiff ought to pay, the defendant whether by themselves and/or their representatives and/or servants and/or agents or by whomsoever be restrained, and an injunction be granted restraining the defendants and/or their servants and/or agents from:

(i) Excluding the plaintiff from the club premises or preventing him from exercising the rights and privileges of membership;

(ii) Restraining the ninth defendant and/or the Election and Disciplinary Committee from considering or deliberating on any disciplinary proceedings against the plaintiff;

(iii) Proceeding with or doing any act in pursuance of the Notice of Suspension dated 14 December 2004.

(2) Order that on the plaintiff's undertaking to abide by any order the court or a judge may make as to damages in case the court or a judge should hereafter be of the opinion that the defendant shall have sustained any by reason of this order and/or their representatives and/or servants and/or agents or by whomsoever be compelled, and an injunction be granted compelling the defendants and/or their servants and/or agents to:

(i) Forthwith convene an Extraordinary General Meeting pursuant to the requisition handed to the club on 2 December 2004;

(ii) Have five senior members of the club other than the present members of the Election and Disciplinary Committee conduct the disciplinary proceedings against the plaintiff.

(3) That a date to be fixed within 21 days from the date of the order made herein for a hearing of this application *inter-partes*;

(4) That the costs of and incidental to this application be costs in the cause;

(5) All such further and/or consequential reliefs as this honourable court may deem fit to grant.

[10] The writ action and encl 3 was filed during the period of court vacation and was heard before James Foong J on 20 December 2004. Though marked ex-parte, the plaintiff served encl 3 on the defendants. Counsel for the defendants was therefore present before Justice Dato' James Foong on 20 December 2004. The court held that there was no urgency in the matter.

[11] The plaintiff thereafter and on 23 December 2004, filed encl 8. The main prayer in encl 8 was that the court do grant an order in terms of para 1 of encl 3.

[12] Enclosure 8 was heard ex-parte on 23 January 2005, by Dato' Tee Ah Sing J after court vacation was over. The learned judge granted the interlocutory injunction on 7 January 2005. The defendants then filed an ex-parte application in encl 19 to set aside the injunction order dated 3 January 2005. Enclosure 19 was ordered by Dato' Tee Ah Sing J to be heard inter-partes on 12 January 2005.

[13] On 12 January 2005, the parties attended before Dato' Tee Ah Sing J. The learned judge was of the view that by para 3.32(b) Practice Direction No 1 of 1989, the action should be filed in the Appellate and Special Powers Division of the High Court of Malaya, Kuala Lumpur. Accordingly the case was transferred to the Appellate and Special Powers Division. The learned judge also ordered that the order of 3 January 2005 be held over until 14 January 2005.

[14] On 14 January 2005 when the matter came before me, the hearing of encl 3, 8 and 19 were fixed at 2.30pm on 24 January 2005. The order of 12January 2005 was extended to the 24 January 2005.

[15] After hearing the parties on 24 January 2005, this court on 26 January 2005 made an order that the injunction of 3 January 2005 be vacated along the terms of encl 19 and the plaintiff's summons in encls 3 and 8 be dismissed with costs.

[16] The central issue to the action here is whether the EDC can suspend a member prior to an inquiry. The plaintiff's contention is that the EDC has no power to suspend him and by doing so, the EDC was in breach of the rules of natural justice. The complaint by the plaintiff may be summarised as follows:

(a) The letter of suspension of 14 December 2004 does not mention that a meeting of EDC had taken place wherein a decision was made to suspend the plaintiff. According to the plaintiff, it is inherent and plainly obvious from the letter of suspension that the EDC has yet to decide on its next cause of action. There is also no mention of the Rules purportedly relied on by EDC in deciding to suspend the plaintiff.

(b) The club has failed to let the plaintiff have the minutes of the meeting that was purportedly held where the EDC deliberated the ninth defendant's complaint and made a decision to suspend the plaintiff.

(c) The club has failed to provide the plaintiff with the names of the members of the EDC who purportedly held a meeting and deliberated on the ninth defendant's complaints. To the plaintiff decision appears to be of the whole EDC which include the ninth defendant.

[17] According to the plaintiff the above are issues which sufficiently show that the proceedings were contrary to the rules of natural justice. It constitutes serious questions to be tried and the injunction sought for against the defendants should be granted.

[18] The defendants on the other hand contended that the suspension of the plaintiff was an interim measure and was purely administrative. According to the defendants, the merit or otherwise of the complaint had not been decided nor was it an issue at this preliminary stage. According to the defendants, the EDC has the authority to suspend a member under r 25(ii) of the Rules which provides as follows:

25 Disciplinary Committee

(i) …

(ii) The Election and Disciplinary Committee may at any time suspend and may, after due notice and enquiry, expel any member of the cub on the ground of any conduct in or out of the cub which in the opinion of the said cmmittee is injurious to the interests of the cub or renders him unfit to associate with members of the cub.

[19] Thus, according to the defendants, there is no serious questions to be tried and the injunction sought for by the plaintiff should be refused.

[20] I am in agreement with the defendants. In *Lewis v Heffer* [1978] 1 WLR 1061, the English Court of Appeal had occasion to deal with the issue of natural justice where the National Executive Committee of the British Labour Party suspended several committee and officers of the party pending the results of an inquiry. The Court of Appeal handed down three written judgments and the decisions were unanimous.

[21] Lord Denning MR dealt with the issue of natural justice as follows:

> But then comes the point: are the NEC to observe the rules of natural justice? In *John v Rees* [1970] Ch 345, Megarry J held that they were. He said at p 397:
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> > … suspension is merely expulsion *pro tanto*. Each is penal, and each deprives the member concerned of the enjoyment of his rights of membership or office. Accordingly, in my judgment the rules of natural justice *prima facie* apply to any such process of suspension in the same way that they apply to expulsion.
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> Those words apply, no doubt, to suspensions which are inflicted by way of punishment: as for instance when a member of the Bar is suspended from practice for six months, or when a solicitor is suspended from practice. But they do not apply to suspensions which are made, as a holding operation, pending inquiries. Very often irregularities are disclosed in a government department or in a business house: and a man may be suspended on full pay pending inquiries. Suspicion may rest on him: and so he is suspended until he is cleared of it. No one, so far as I know, has ever questioned such a suspension on the grounds that it could not be done unless he is given notice of the charge and an opportunity of defending himself and so forth. The suspension in such a case is merely dome by way of good administration. A situation has arisen in which something must be done at once. The work of the department or the office is being affected by rumours and suspicions. The others will not trust the man. In order to get back to proper work, the man is suspended. At that stage the rules of natural justice do not apply…
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> So in this case the rules of natural justice do not apply. The suspensions are not invalid on that account.

[22] Omrad LJ stated as follows:

> Rules of association of this kind ultimately derive their legal effect from the acceptance, by the members, of the terms and conditions of the association when they join the group….
>
> My conclusion, therefore, like Lord Denning MR's is that the NEC has the necessary powers to suspend the general committee, the executive committee and the officers…
>
> The remaining point of law that questions of natural justice. This is a highly attractive and potent phrase and as such, in my judgment, must be used very carefully. Sometimes it is used to mean that the person or persons concerned must be given adequate opportunity of making representations …. If that means that the NEC must act fairly, there is no dispute. If it means that it must give particulars of complaints and an opportunity of being heard by all persons concerned before ordering a suspension of a local party such as here, then there is a real dispute because, of course, the NEC says it is quite impracticable to do so. They have to hold an inquiry to get at the facts first, and it is reasonable to suspend all concerned pending such an inquiry…. The last question is the matter of the balance of convenience, and I have nothing to add to what Lord Denning MR had said save to say that were to grant the injunction asked for … we should be simply re-creating or, if it is possible to do so, 'reinstating' the chaos which existed before and which must be utterly frustrating to all concerned.

I would like to conclude this judgment by saying just this. No organisation can survive a steady shower of writs and no organisation can possibly be made to work by a series of injunctions. I therefore would dismiss these appeals.

[23] Geoffrey Lane LJ concurred and added the following:

The remaining difficulty arose from an attempt to apply the rules of *American Cyanamid Co v Ethicon Ltd* … At the end of the day I have been driven to the conclusion that those *Cyanamid* rules are practically impossible to apply to the present circumstances. They were designed to cover a commercial situation where loss, hardship or misfortune could be compensated by payments of money. In the political context which exists in this case there can be no questions of quantifying anyone's loss in terms of cash. Secondly, in the *Cyanamid* type of situation, it is possible if necessary to freeze the situation as it existed before the dispute between the parties arose, in other words, to preserve the status quo, and indeed one is enjoined by the *Cyanamid* decision to do so if the balance of convenience is equal. Here, for reasons which have been explained already into which it is unnecessary for me to go, it would be impracticable to do such a thing, because the situation is in a total state of flux….

It seems to me that this suspension was an administrative action which by its very nature had to be taken immediately. It was impossible for the NEC at that stage — and I emphasise those words 'at that stage' — to hear both sides … No one's livelihood or reputation at that stage is in danger.

[24] Similarly in the present case, the suspension of the plaintiff was not a punishment. It was only a suspension pending an inquiry. The merit or otherwise of the complaint has not been decided as yet. As such the rule of natural justice has no application at this stage.

[25] Another point is this. The club is a social club. The Rules of the club provide that when a complaint is lodged against a member, the complaint must be investigated. The member will be given the right to be heard. Once the EDS hears all parties and witnesses, it will make a decision. That decision may be appealable either to GC or even to an EGM of the club. Thus, for the moment, the plaintiff has to put his case to the EDC just as any member of the club has to when a complaint is pending. Subsequently, if he is not happy with the decision of the EDC, he has to resort to the domestic remedies available under the Rules. In short, he has to exhaust his domestic remedies before resorting to the courts

[26] In *Tharmalingam v Sambanthan* [1961] MLJ 63, the appellant did not resort to the domestic remedy but applied straight to the court for a declaration that his suspension from membership under art 28 of Malayan Indian Congress (MIC) constitution was null and void and for an injunction to restrain the defendant, the President of MIC from preventing him from exercising his rights and priviledges as a member of the MIC. Thomson CJ held that the appellant's approach was premature and the appellant, should resort to the domestic remedies before resorting to the courts.

[27] The case of *Florence Bailes v Dr Ng Jit Leong* [1982] 1 MLJ 333 is more direct on point. In that case the defendant applied for the dissolution of an order of court allowing an injunction against the Penang Club from suspending the plaintiff from Penang Club premise and all priviledges accruing to members thereof until the trial of the action. The issue before the court was purely a question of law as to whether the committee of the club had exceeded their powers in suspending the plaintiff without giving the opportunity to defend herself and whether principles of natural justice applied to this case. It was held by Arulnandon J, *inter alia* that:

> The courts would only interfere if such decisions affect the right of an individual to work and earn his livelihood or when an individual's right to property has been affected. The courts have been both to interfere in the affairs of purely social clubs as they held the relationship there to be of such a personal and intimate nature that the management should be allowed to administer the club without interference from the courts.
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> As the plaintiff had no proprietary interests in the club she could not obtain any relief by way of injunction and the courts should not interfere with the decision of the Penang Club Committee which has full responsibility for the administration and discipline of the club. Therefore, the said injunction ought to be dissolved.

[28] Similarly, in the instance case, the club is a social and members' club. It is not a club that the plaintiff must be a member of in order to earn a living. If every respondent to a complaint lodged in a social club were to be permitted to commence proceeding in a court of law and injunct disciplinary proceedings, our courts would be inundated with such actions. At the same time clubs in this country will not be able to function. In the words of Omrod LJ in *Lewis v Heffer* that 'No organisation can survive steady shower of writ and no organisation can possibly be made to work by a series of injunctions'.

[29] It is for the above reasons that the injunction of 23 January 2001 was vacated along the terms of encl 19 and the plaintiff's summons in encls 3 and 8 were dismissed with costs.

Plaintiff's summons dismissed with costs.

Reported by Peter Ling